

Note: Prior to *Filing a Petition for Expungement*, you MUST obtain a copy of your criminal record from the [State Bureau of Identification \(SBI\)](#). The cost is \$45 and takes approximately 5 to 10 working days. You may call SBI for more information at: 302.739.2134; 302.738.2528; or 392.834.2628.

TITLE 11

Crimes and Criminal Procedure

Criminal Procedure Generally

CHAPTER 43. SENTENCING, PROBATION, PAROLE AND PARDONS

Subchapter VII. Expungement of Criminal Records

§ 4371. Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven.

(62 Del. Laws, c. 317, § 2.;)

§ 4372. Termination of criminal action in favor of accused.

(a) If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the accused, the person may request the expungement of the police records and the court records relating to the charge pursuant to the provisions of this subchapter.

(b) For the purposes of this subchapter, a case shall be deemed to be "terminated in favor of the accused" only if:

(1) The accused is acquitted of all charges related to the case; or

(2) A nolle prosequi is entered on all charges related to the case, or all charges related to the case are otherwise dismissed.

(c) For the purposes of this subchapter, "case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; [72 Del. Laws, c. 150, § 5](#); [76 Del. Laws, c. 392, § 1.](#);)

§ 4373. Mandatory expungement.

(a) If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16 or 23, excepting those crimes specifically exempted in subsection (c) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an

appropriate request to the State Bureau of Identification by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused.

(b) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this section it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation of the completion of the expungement. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(c) Mandatory expungement pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes:

- (1) Any misdemeanor designated as a sex offense pursuant to § 761 of this title;
- (2) Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of this title;
- (3) Trespassing with intent to peer or peep, pursuant to § 820 of this title;
- (4) Endangering the welfare of a child, pursuant to § 1102 of this title;
- (5) Endangering the welfare of an incompetent person, pursuant to § 1105 of this title;
- (6) Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;
- (7) Any misdemeanor or violation set forth in Chapter 85 of this title;
- (8) Patient abuse, pursuant to § 1136 of Title 16;
- (9) Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

(d) At the time the application requesting expungement is filed with the State Bureau of Identification the applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement that does not include the applicant's criminal history without further notice to the applicant.

(e) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this section.

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; [72 Del. Laws, c. 150, § 6](#); [76 Del. Laws, c. 392, § 2](#);)

§ 4374. Discretionary expungement.

(a) Notwithstanding any provision of § 4373 of this title to the contrary, if a person is charged with the commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Superior Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records, or includes any electronic records, relating to the charge or charges. Discretionary expungement pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of § 4373 of this title; provided, however, where a person was charged with a criminal offense where discretionary expungement pursuant to this section applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to § 4373 of this title applies, such person must file a petition in Superior Court pursuant to this section.

(b) After the petition requesting expungement is filed with the Superior Court the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(c) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge or case. Otherwise, it shall deny the petition. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner. A petition filed by the Attorney General or the Attorney General's designee pursuant to subsection (e) of this section shall be granted by the Court.

(d) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(e) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney General or the Attorney General's designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest record of a defendant if at the time of a state motion to dismiss or entry a nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of

information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(f) If an order expunging the records is granted by the Court, all the criminal records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(g)(1) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the police records and the court records relating to any charge set forth in Title 21 shall not be expunged pursuant to this subchapter unless the charge or charges is one of those specifically enumerated in paragraph (2) of this subsection.

(2) Discretionary expungement pursuant to this section shall be applicable when otherwise appropriate for the following Title 21 offenses:

- a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;
- b. Reckless driving, pursuant to § 4175 of Title 21;
- c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;
- d. Driving under the influence, pursuant to § 4177 of Title 21; or
- e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21.

(h) The Superior Court shall establish a reasonable fee schedule for the filing of a petition of expungement pursuant to this section.

([76 Del. Laws, c. 392, § 3](#); 70 Del. Laws, c. 186, § 1.;)

§ 4375. Discretionary expungement following a pardon.

(a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation excepting those crimes specifically exempted in subsection (b) of this section who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures set forth in § 4374 of this title. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to

prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of that petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(b) Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes:

(1) Any misdemeanor or violation involving embezzlement of public money, bribery or perjury;

(2) Any misdemeanor designated as a sex offense pursuant to § 761 of this title; or

(3) Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title.

([76 Del. Laws, c. 392, § 3](#); 70 Del. Laws, c. 186, § 1.;)

§ 4376. Disclosure of expunged records.

(a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly.

(62 Del. Laws, c. 317, § 2; [76 Del. Laws, c. 392, § 3.](#);)

§ 4377. Notification to federal government.

Upon the granting by the Court for an order for the expungement of records in accordance with this subchapter, a copy of such order shall be forwarded to the federal Department of Justice.

(62 Del. Laws, c. 317, § 2; [76 Del. Laws, c. 392, § 3.](#);)

§ 4378. Expungement of offenses resolved by probation before judgment and the first offenders controlled substances diversion program.

(a) Notwithstanding any statute or rule to the contrary, the police records and court records relating to any charge resolved by probation before judgment as set forth in § 4218 of this title followed by a discharge from probation upon fulfillment of the terms and condition of probation shall not be expunged unless at least 5 years have elapsed from the date on which the defendant was discharged from probation. After such 5-year period has elapsed, any charge resolved by probation before judgment followed by a discharge from probation upon fulfillment of the terms and condition of probation shall be expunged pursuant to the provisions of this subchapter.

(b) Notwithstanding any statute or rule to the contrary, the police records and court records relating to any charge resolved by the First Offenders Controlled Substances Diversion Program as set forth in § 4764 of Title 16 followed by a discharge from probation upon fulfillment of the terms and condition of probation shall not be expunged unless at least 2 years have elapsed from the date on which the defendant was discharged from probation. After such 2-year period has elapsed, any charge resolved by the First Offenders Controlled Substances Division Program followed by a discharge from probation upon fulfillment of the terms and condition of probation shall be expunged pursuant to the provisions of this subchapter.

([76 Del. Laws, c. 392, § 4.](#);)

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